

QUERIES

Relating to the

BIRTH and BIRTHRIGHT

OF A

Certain Person.

*Chartæ Invasoris præjudicium legitimo Principi minime
facere deberent.* Gervas. inter decem Scriptores.

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QUERIES.

IF a Child is own'd by both Parents, is he to be taken for a true Child of those Parents, till he be legally prov'd to be otherwise?

II. Is a Child own'd by both Parents to be set aside by any Suspicions or Reports, before his Birth be legally disprov'd?

III. Is the Birth of a Child own'd by both Parents to be doubted of, when it could not be disprov'd by a *Great*, a *Powerful*, a *Prevailing*, a *Vigilant*, a *Crafty*, an *Interest*, a *Malicious* and a *Clamourous Party*, which call'd it in Question?

IV. Is the Birth of a Child own'd by both Parents to be doubted of, when it was never disprov'd by the Next Heir, who had publickly own'd and acknowledg'd it before *God* and *Man*; and who, tho' he afterward publickly call'd it in Question, yet was never able to disprove it?

V. Is the Birth of a Child own'd by both Parents to be doubted of, which was never disprov'd by the Next Heir, who call'd it in Question, and who declar'd to the World, that he would refer the Examination of it to certain Judges when assembled; but never did refer it, nor propose it to them, as he declared he would, tho' the Assembly were of his own Party, and several times call'd upon and challeng'd by the Child's Father to enquire into the Birth; nay, tho' the said Next Heir were got into Possession of that Station, which the Child's Father did claim while he lived for Himself, and for his said Child upon his Demise; and tho' the said Next Heir was thus bound

bound in Honour and Conscience, had Power as well as Will, and Opportunity as well as Interest to have disprov'd it, if he could have done it?

VI. Is the Birth of a Child owned by both Parents to be doubted of, or called in Question, in a Country or Kingdom where there is no Law nor Custom obliging the Parents to call in any solemn extraordinary Witnesses to the Birth of their Children?

VII. Is the Birth of a Child owned by both Parents to be doubted of, when there were more Witnesses of his Birth than ever were of any other Child's Birth since the Creation of the World, and those Witnesses Persons of Quality and Distinction?

VIII. Has not that Child then, whose Birth was never disproved, a legal and just Title to his Birth?

IX. Has not that Child, who has a legal and just Title to his Birth, a legal and just Title to his Birth-right also?

X. Can he who is in Possession of the Titles to Birth and Birthright, be defeated of them till they are legally disproved?

XI. Whether is not He who is in Possession of a just Title to his Birthright, in Possession also of a just Title to all Things that belong to him by his Birthright?

XII. Whether can a Man be discharged from his legal Duty in Conscience, who is not justly discharged from it?

XIII. Whether is a legal Proof and Evidence of a Birth, without any Proof or Evidence to the contrary, a convincing Proof?

XIV. Whether the owning the Birth of a Child by a Powerful and Malicious Party, who had disowned it, and slandered his Parents for many Years, be not a sufficient Argument for his Birth against that Party?

XV.



XV. Is it Christian or Just to set aside the Birth and Birthright of an innocent Person, whose Birth hath such legal Proofs and Evidence, that never was, or can be disprov'd?

XVI. Is it reasonable or just, were it lawful, to deprive a Child of his Birthright, while an Infant, upon the Pretence of any Religion, which in his Infancy he was utterly incapable of understanding?

XVII. Is it reasonable or just, were it lawful, to deprive a Child of his Birthright, for being bred in the Religion his Parents professed, and which was the only Religion of the Country in which he was bred?

XVIII. Is it reasonable or just, were it lawful, to deprive a Child of his Birthright, for being bred up in the only Religion he could learn in the Place where he was forced to be, by those very People, who took upon them to deprive him of his Birthright, while an Infant, because he was of that Religion?

XIX. Is it reasonable or just, were it lawful, to deprive a Child of his Birthright, for being of this or that Religion, without giving the same Encouragements to Conversion, which are given to all other People of that Religion, or without any Proviso to restore him to his Birthright, in case he should turn to the Religion of the Deprivers themselves?

XX. Can a Man have his Birthright legally and validly taken away from him, that has no *Superiour Authority* above him, that can or could take way his Birthright?

Johannis

Johannis Calvini Lexicon Juridicum.

Notorium Præsumptionis est de Evidentia Juris vehementis præsumptum, ut Paternitas, Filiatio, ubi non requiritur alia Probatio, nisi Præsumptionis & Conjecturæ. [c. quoniam de Fil. Presbyt.]

Nam quod quis sit alicujus Filius, non potest vere probari. [Leg. *Lucius*. ff. de Condit. & Demonstr.]

Unde Filius est quem Nuptiæ demonstrant. ff. de in Jus. Voc. L. quia semper in Fin.]

Nam si Vir & Uxor aliquem Infantem nutriunt, & dicunt eum Filium eorum esse; tunc præsumiter eorum Filius. Est ergo *Notorium Præsumptionis* Evidentia rei evidenter a jure præsumpta.

Before I proceed to explain this Passage, I must premise the *Civil Law Definition of Notorium*; that is, of a Thing which is so evident to all, that it needs no Proof. Things thus notorious are of three Sorts, *Præsumptionis, Juris & Facti*.

Notorium Præsumptionis is, what the Law does vehemently presume to be true without requiring Proof; as that a Father is Father to such a Son, and such a Son the Son of such a Father; in which Case no other Proof is requir'd but *Presumptions or Conjectures*. For it cannot be truly nor properly prov'd that this is the Son of that Man. From whence it is taken for granted, that he is Son who is born in *Wedlock*. For if a Husband and his Wife educate a Child, and say he is their Son, then he is presumed to be their Son. Therefore *Notorium Præsumptionis* is the Evidence of a Thing which the Law presumes to be true.

To this Purpose *Martinius* in his *Lexicon*. Est autem notorium, quod notum est, manifestum, evidens. Notorium est triplex apud Juris-Consultos; *Præsumptionis, Juris, Facti*. *Notorium Præsumptionis* est Evidentia a Jure præsumpta: Ut si Vir & Uxor aliquem Infantem nutriunt, & dicunt eum esse Filium ipsorum, tunc præsumitur ipsorum Filius. This is the Law of all Nations.

POSTSCRIPT.

WHETHER has a *Native Child* of a Country,
own'd by both Parents, &c. or a *Foreign Child*,
born of a *Woman*, whose Husband was jealous of her,
separated from her, and *confin'd* her, the *Best Title* to
Legitimacy? And which of the Two ought, in Reason,
to be most the *Concern* of those of that Country where
the Child was *born*, who was thus own'd by both Pa-
rents? &c.

F I N I S.
